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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,756	09/21/2001	Keith Branden Eberlein	CM04703H	6318
22917	7590	12/27/2004	EXAMINER	
GESESSE, TILAHUN				
ART UNIT			PAPER NUMBER	
			2684	

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/960,756	EBERLEIN ET AL.
Examiner	Art Unit	
Tilahun B Gesesse	2684	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 July 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-5 and 13-19 is/are rejected.

7) Claim(s) 6-12 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____ .

DETAILED ACTION

1. This is in response to applicant's argument filed 7/16/04, in which claims 1-19 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Schieve et al "Schieve" (US 5,263,177).

Claim 1, Schieve discloses a communication system (figure 1) at least a first and second simulcast station at a first remote site (101,105,107 sites in communication with remotes 121 and 125 over the overlap regions, column 2, line22-column 3, line 13).

Schieve discloses detecting unavailability of the first simulcast station for communicating on a first communication resource (the base site selection is performed by the master controller 109 based on acceptable RSSI and base sites with unacceptable RSSI determined, column 3 lines 42-68 and figures 3-4).

Schieve discloses determining if the second simulcast station is available for supporting simulcast transmissions on the first communication resource, (the base site selection is performed by the master controller 109 based on acceptable RSSI, column 3 lines 42-68 and figures 3-4) and if the second simulcast station is available, assigning the second simulcast station to communicate on the first communication resource

(column 4 lines 29-39 and figure 6). A remote unit within the overlap region is assigned base site with strong signal strength for simulcast communication.

Claim 2, Schieve discloses communicating, by the second simulcast station, simulcast messages on the first communication resource (abstract).

Claim 3, Schieve discloses determining and assigning are performed by a simulcast site controller (column 3, line 42-column 4, lines 39).

Claim 4, Schieve discloses detecting, is accomplished by the simulcast site controller failing to receive a response to a message sent to the first simulcast station (column 3, lines 14-41 and figure 2). To illustrate, when a remote sends its ID for registration base sites with a significant distance, gets the ISW at too low threshold, therefore, this is what the examiner considered a message failed to be received by simulcast site. Claim 5, Schieve discloses a comparator adapted for sending data to be communicated over the simulcast channel to one or more of the simulcast stations along with a timestamp specifying when the data will be transmitted (column 3, lines 23-41). Claim 13, Schieve discloses the unavailability of the first simulcast station is due to a malfunction of the first simulcast station (station out of the coverage is considered as a malfunction, (column 4, lines 47-51).

Claims 14-15, Schieve discloses a wireless communication system (figure 1) employing simulcast communication, a method for initiating simulcast communication in a simulcast site (figure 1A), the simulcast site, a plurality of remote sites ((101,103,105,107), determining availability of a plurality of simulcast stations located at the plurality of remote sites (abstract, distortion occurs because the signals are not

completely time and frequency aliened when they reach the remote units) assigning, by a simulcast site controller (109), members of a first simulcast channel, the members comprising respective first-available simulcast stations at each of the remote sites (column 4, lines 29-57 and figure 6), and performing simulcast communication using the first simulcast channel (column 4 lines 5-28 and figure 5).

Claims 18-19, Schieve discloses a communication system (figure 1) at least a first and second simulcast station at a first remote site (101,105,107 sites in communication with remotes 121 and 125 over the overlap regions, column 2, line22-column 3, line 13).

Schieve discloses detecting unavailability of the first simulcast station for communicating on a first communication resource (the base site selection is performed by the master controller 109 based on acceptable RSSI and base sites with unacceptable RSSI determined, column 3 lines 42-68 and figures 3-4).

Schieve discloses determining if the second simulcast station is available for supporting simulcast transmissions on the first communication resource, (the base site selection is performed by the master controller 109 based on acceptable RSSI and base sites with unacceptable RSSI determined, column 3 lines 42-68 and figures 3-4) and if the second simulcast station is available, assigning the second simulcast station to communicate on the first communication resource (column 4 lines 29-39 and figure 6).

Allowable Subject Matter

4. Claims 6-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach detecting is accomplished by the first simulcast station notifying the comparator of a malfunction and the comparator notifying the simulcast site controller of the malfunction.

Response to Arguments

5. Applicant's arguments with respect to claims 1-5,13-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tilahun B Gesesse whose telephone number is 703-308-5873. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 703-308-7745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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December 15, 2004



**TILAHUN GESESSE
PRIMARY EXAMINER**